

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MICHAEL SCOTT OHANIAN,

Defendant-Appellee.

UNPUBLISHED

June 2, 2009

No. 284821

Macomb Circuit Court

LC No. 05-004578-FH

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from a circuit court order granting defendant's motion to suppress his statements to police, which the trial court determined were the product of an unlawful traffic stop. We reverse and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This Court reviews a trial court's factual findings at a suppression hearing for clear error, but reviews the court's ultimate ruling on a motion to suppress de novo. *People v Marcus Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002). "The trial court's factual findings are clearly erroneous if, after review of the record, this Court is left with a definite and firm conviction that a mistake has been made." *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997).

"The Fourth Amendment of the United States Constitution and its counterpart in the Michigan Constitution guarantee the right of persons to be secure against unreasonable searches and seizures." *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000). An investigatory stop, which is limited to brief, nonintrusive detention, constitutes a Fourth Amendment seizure. *People v Bloxson*, 205 Mich App 236, 241; 517 NW2d 563 (1994). A police officer may briefly stop and detain a person to investigate possible criminal activity if he has a reasonable suspicion based on specific and articulable facts that the person detained has committed or is committing a crime. *People v Shankle*, 227 Mich App 690, 693; 577 NW2d 471 (1998).

It is undisputed that the police did not have the reasonable suspicion necessary for conducting an investigatory stop. However, the trial court clearly erred in finding that the officers stopped defendant's car with the assistance of a marked patrol unit. The testimony showed that Detectives Essad and Daniels were in unmarked police vehicles when they followed defendant in his car. Because they did not display any show of authority indicating that

defendant was required to stop or was not free to leave the area, the act of following him did not constitute a seizure. *People v Mamon*, 435 Mich 1, 12; 457 NW2d 623 (1990). Essad intended to stop defendant but could not do so because he was in an unmarked car and had no way to order defendant to stop. Rather, defendant spotted the officers following him and stopped of his own accord. Essad had advised dispatch of his intentions. Sergeant Ferguson overheard the transmission and went to the scene to offer assistance. Essad wrote in his report that Ferguson assisted in stopping defendant's car, but Daniels' and Ferguson's un rebutted testimony was that Ferguson arrived on the scene after defendant's car had stopped. Ferguson further testified that when he arrived, defendant and Essad were already out of their cars and conversing in the parking lot. There is simply nothing in the record to support a finding that the police conducted a traffic stop. Rather, defendant stopped, which prompted the officers to stop as well. Defendant exited his car as the officers approached to talk to him.

"A person is 'seized' within the meaning of the Fourth Amendment if, 'in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.' " *People v Armendaraz*, 188 Mich App 61, 69; 468 NW2d 893 (1991), quoting *Michigan v Chesternut*, 486 US 567, 573; 108 S Ct 1975; 100 L Ed 2d 565 (1988). "[T]o constitute a seizure for purposes of the Fourth Amendment there must be either the application of physical force or the submission by the suspect to an officer's show of authority." *People v Lewis*, 199 Mich App 556, 559; 502 NW2d 363 (1993). "When an officer approaches a person and seeks voluntary cooperation through noncoercive questioning, there is no restraint on that person's liberty, and the person is not seized." *People v Jenkins*, 472 Mich 26, 33; 691 NW2d 759 (2005). A police approach for questioning on the street does not amount to an investigatory stop "unless there exist intimidating circumstances leading the person to reasonably believe he was not free to leave or the person rebuffs the police officer by refusing to answer and walking away." *People v Daniels*, 160 Mich App 614, 619; 408 NW2d 398 (1987). The Fourth Amendment is not implicated until the officer interferes with the defendant's attempt to leave, at which time the officer must have reasonable suspicion to make an investigatory stop. *Jenkins*, *supra* at 34.

The evidence showed that defendant voluntarily stopped, exited his vehicle, and spoke with the officers in the parking lot. Essad told defendant why he wanted to speak with him and testified that he advised defendant "that he was not in custody, he was free to leave at any time," and that defendant then gave oral and written statements after being allowed to confer with his sister by telephone. There was no evidence of any intimidating circumstances or display of authority by the officers indicating that defendant was not free to leave or that defendant tried to leave and was prevented from doing so, and thus defendant was not in custody. Because defendant was not in custody, the officers were not required to advise him of his constitutional rights. *People v Hill*, 429 Mich 382, 399-400; 415 NW2d 193 (1987); *People v Herndon*, 246 Mich App 371, 395-396; 633 NW2d 376 (2001).

In sum, the record does not support a finding that defendant's constitutional rights were

violated and thus the trial court erred in suppressing his statements.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald

/s/ Michael J. Talbot

/s/ Douglas B. Shapiro